

WISCONSIN STATE REPRESENTATIVE

Louis J. Molepske, Jr.

71st Assembly District

Statement of
Rep. Louis J. Molepske, Jr.
Before the Assembly
Committee on Jobs, the Economy and Small Business
February 3, 2010

I appreciate the opportunity to testify in support of Assembly Bill 654, which requires local units of government to use the Qualifications- Based Selection (QBS) process for certain public works consulting contracts.

Qualifications Based Selection is a process for selecting design professionals through a negotiated process that is based on their competence, experience, and qualifications. This legislation requires local governments to use QBS to select engineers, architects, land surveyors, landscape architects, or professional geologists for public works projects that cost over \$250,000, require the services of a consultant, and include financial assistance provided by the state. It should be noted that this bill only addresses the design phase of a public works project and not the construction phase. Design costs typically represent only around one percent of the total lifecycle cost of a public works project.

Currently, Wisconsin is one of only four states that does not have QBS legislation on the books. Federal law requires the use of QBS to select architects or engineers for federally funded projects. QBS is used by the Wisconsin Departments of Administration and Transportation to select architects and engineers for state building and highway projects. However, in Wisconsin there is currently no requirement that local governments use QBS, even on state funded projects, unless federal funds are involved.

Cheap design can be an expensive mistake. The lowest bid is not always the best choice when selecting professionals to plan and design complex public projects. QBS safeguards public safety and public funding by enabling public agencies to acquire the services of the most qualified engineering firm for a particular project—at a negotiated, reasonable cost.

Additionally, the enactment of a QBS system will allow small and medium sized firms to be more competitive for public contracts. This legislation gives small businesses the ability to compete on the grounds of the quality of their ideas rather than their ability to produce the lowest bid. This bill also allows for local government units to view their public projects holistically by encouraging them to consider a multitude of factors rather than just a project's price tag.

DISTRICT: (715) 342-8985 1557 Church Street Stevens Point, WI 54481 Rep.Molepske@legis.wi.gov STATE CAPITOL: P.O. Box 8953 Madison, WI 53708 FAX: (608) 282-3671 At a time when the state is facing serious fiscal issues, we have a vested interest in knowing state taxpayer dollars are being used in the most efficient and effective manner. The QBS is a proven method to provide the accountability we, as taxpayers, need and deserve. I hope the Committee will positively consider AB 654. I'm happy to respond to any questions you have.

Sincerely,

Rep. Louis, J. Molepske, Jr.

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71st Assembly District



CHAIR
COMMITTEE ON COMMERCE, UTILITIES, ENERGY, AND RAIL

STATE CAPITOL P.O. BOX 7882 MADISON, WI 53707-7882 800-361-5487 - MADISON 414-744-1444 - MILWAUKEE SEN,PLALE@LEGIS.WISCONSIN.GOV

Testimony of Senator Jeff Plale Assembly Bill 654 Assembly Committee on Jobs, the Economy, and Small Business February 3, 2010

Chairperson Molepske and Members of the Committee:

Thank you for the opportunity to testify before you today on Assembly Bill 654, relating to requiring local units of government to use the qualifications-based selection process for certain public works consulting contracts.

Qualifications-Based Selection (QBS) is a process for selecting design professionals through a negotiated process that is based on their competence, experience, and qualifications. So there is a clear understanding upfront, I want to emphasize that this bill only addresses the issue of the <u>design</u> phase of a public works project and has nothing to do with local government units bidding out services for the <u>construction</u> phase.

With the implementation of the Brooks Act in 1972, federal law requires the use of QBS to select architects or engineers in the design phase for federally-funded projects. Its proven success at the federal level has led forty-six states and a variety of municipalities throughout the country to follow suit in adopting laws and ordinances requiring QBS on state and local projects. QBS is also used by the Wisconsin Departments of Transportation and Administration to select architects and engineers for state highway and building projects. However, currently, there is no requirement that local governments use QBS, even on state-funded projects (unless federal funds are involved).

It is a misconception that the lowest price is always the best choice when selecting professionals to plan and design public projects. Design costs typically represent about one percent of the total lifecycle cost of a public works project. It is not in the best interest of taxpayers to underestimate the importance of finding the best-qualified designer to reduce the lifecycle costs of a public works project, and automatically select the lower price.

With this in mind, I introduced Assembly Bill 654 requiring local governments to use QBS to select engineers, architects, land surveyors, landscape architects or professional geologists for public works projects that are over \$250,000 and for which the state



provides financial assistance. While the primary emphasis in the selection process is on the designer's qualifications and not the lowest price, this bill does not prohibit other bidding processes if negotiations between the local government unit and all consultants submitting proposals for the project fail to produce an agreed upon contract. Assembly Bill 654 also stipulates that if a local government unit hires a consultant for local bridge inspections, QBS must be utilized and it negates the thresholds established in the bill for total project cost and state financial assistance. When damage or threatened damage to the public work creates an emergency, QBS is not required for selecting consultants in the repair or reconstruction of that public work.

Thank you for your consideration of this bill.

Assembly Bill 654 pertaining to Qualifications Based Selection for Governmental Owners Public Testimony
American Institute of Architects – Wisconsin Chapter
February 3, 2010

• Mr. Chairman Molepske and members of the committee, I am Jon Jenson.

I am here on behalf of the American Institute of Architects – Wisconsin Chapter. This chapter is the professional society for Wisconsin architects. This chapter represents architects and allied professionals in private practice, business, industry, education and government and has approximately 1,500 professional and allied members.

I am on their Board of Directors and have been a member of this society for over 30 years. I am filling in for our executive director who is at a conference in Washington DC.

Related to my background, I am an architect who has worked in the private sector for architectural, engineering, and construction firms. For the past 15 years, I have been a project manager for DOA's Division of State Facilities. That means I have practical experience on both sides of QBS – as a service provider and as an Owner.

The American Institute of Architects – Wisconsin Chapter established its qualifications-based selection (QBS) program in 1986. It's been offered as a joint program with ACEC of Wisconsin since 1987.

The QBS Wisconsin program includes a step-by-step manual that local public officials can use to set up a rational process to select architects and engineers for their projects on the basis of qualifications and competence. AIA Wisconsin provides facilitator services as a free public service to help guide owners in implementing a QBS process.

Since 1986, AIA Wisconsin has assisted over a thousand owners in establishing and utilizing a QBS process. The feedback from these public owners has been uniformly positive. These owners have indicated that QBS keeps the selection process focused and on track, improves communication and understanding, and effectively identifies the best architect and engineer for their projects. You can find testimonials, on the QBS Wisconsin website: www.qbswi.org.

The Wisconsin League of Municipalities has recommended the QBS program to its members.

Looking at the big picture, architectural fees amount to less than 1% of construction and operating costs of a building. Investing in quality design can result in better bidding documents and more competitive construction bids, reduce operating and maintenance expenses, and improve the productivity and efficiency of government staff.

From my direct experience, there are many reasons why all governmental Owners should use QBS for selecting their design professionals. I will list just 4 reasons.

- 1. The primary reason is that, typically, architectural and engineering services start without a lot of substance. In other words, without specific scopes of work. In fact, Owners typically hire architects and engineers to establish a defensible scope of work. The Architectural and Engineering profession is akin to the medical profession. Medical professionals are hired for their expertise and to establish a scope of work on their patients.
- 2. The second reason relates to the first reason. That is,QBS usually prevents bidding of professional services. That is a good thing for Owners because, at the start, architectural or engineering scopes of work are never fully quantified. So bidding is on what? In sharp contrast to the start of architectural and engineering work, building contractors start their work with specific, quantifiable, information via plans and specifications. Because of that quantifiable information, bidding contractor services is the way the go. But it is not the way to select an architect or engineer.
- 3. The third reason is QBS is usually performed by a committee which creates transparency. That transparency can effectively block cronyism and nepotism and other questionable arrangements.
- 4. The fourth reason is QBS leads Owners into making a selection decision based on a consensus approved prescribed requirements, and skills. This ensures the Owner is getting the highest qualified expertise for its project. Many times the architect or engineer helps the Owner define its immediate and long term expectations. This is where experience and knowledge play an integral part of putting together a successful project.

In summary, buildings projects are too important to rely on cheap or quick methods for procurement of architectural and engineer services. That is why the American Institute of Architects - Wisconsin Chapter supports passage of this bill.

Thank you.



Issue Brief

The American Institute of Architects • Government Advocacy • Current Issue Position and Analysis

Qualifications Based Selection

Key Points:

- The American Bar
 Association endorses QBS in
 its "Model Procurement
 Code for State and Local
 Governments."
- ♣ 48 states follow QBS procedures for procuring A/E services.
- In recent polling, only 11
 percent of voters said they
 agreed with the viewpoint
 that "architects and
 engineers who are hired by
 government agencies to
 design and construct public
 buildings like schools, court
 houses, hospitals, airports,
 and prisons should always be
 awarded to the lowest bidder
 in order to save money."
- 8- 88 percent agreed with the statement, "Because public health and safety is at stake, these contracts should be awarded by selecting the best qualified architects and engineers and then negotiating the best possible fee."
- Every major voter group registered over 80 percent support for the QBS concept.

The American Institute of Architects 1735 New York Avenue, NW Washington, DC 20006-5292 Phone: 202-626-7505

Fax: 202-626-7583
E-mail: govaffs@aia.org
Website: www.aia.org

Qualifications Based Selection

AIA Position

The American Institute of Architects strongly supports Qualifications Based Selection (QBS) for procuring professional design services for public projects. QBS is required for federal projects as described by the Brooks Architect/Engineer Act (Public Law 92-582, 40 U.S.C. 541 et seq.).

Action Sought

The AIA urges state legislators to support the use of Qualifications Based Selection for procuring architectural services.

Explanation and Justification

QBS stands for Qualifications Based Selection. QBS provides owners with a selection process that is not only straightforward and easy to implement, but is objective and fair. It recognizes that design professionals play a critical role in the public building process.

As QBS is predicated on the notion that qualifications, not price, should be the determining factor in selecting an architect, it places fee negotiation at the end of the selection process. While price may have its place within the selection process, it alone should not be the determining factor.

The reason for this is clear: Projects that are contracted solely on price do not take into account the myriad additional factors that go into architectural design. Architectural design is an evolving process and much goes into it after the drawings are signed, sealed and delivered. In fact, one of an architect's principal duties is to ensure that the construction process goes smoothly.

It is an architect's experience, expertise and ability to resolve unforeseen problems creatively that will keep a construction project moving forward. These intangibles are common throughout the process. As a result, owners who rely only on a submitted bid as the project cost may be placed in a difficult position if the final cost is significantly higher.

QBS helps resolve the projected vs. final cost dilemma by negotiating the project's cost with the most qualified firm among the applicants. QBS also fosters a collaborative environment, so the roles of all stakeholders are known, documented and understood. Finally, because the selection process is well-documented, decisions the owner makes are more likely to stand up to public scrutiny.

For more information contact the State and Local Affairs team at 202-626-7507 or govaffs@aia.org.

Updated: December 2005



To:

Members of the Assembly Committee on Jobs, the Economy and Small Business

From:

Allison Bussler, Waukesha County Director of Public Works

Norman Cummings, Waukesha County Director of Administration

Date:

February 3, 2010

Re:

In Opposition to Assembly Bill 654

I want to strongly urge members of the Committee to oppose Assembly Bill 654 (AB 654) as it is currently drafted. AB 654 is a mandate that will increase costs to Waukesha County taxpayers. The bill requires local governments using State funds to hire consultants for all public works projects (\$250,000 or more) based only on the consultant's qualifications and excluding any consideration of cost.

Waukesha County believes in hiring qualified contractors to provide us with quality designs for our buildings and infrastructure. Safety is of the utmost importance to us. Choosing a consultant based ONLY on cost could sacrifice quality in some cases. However, excluding cost from your selection process does not ensure a quality project either. Well-scoped projects with strong oversight are the essential elements to delivering quality, cost-effective projects.

Waukesha County uses a value based selection process that bases 75%, of a possible 100, on qualifications and 25% on cost. We believe our process has proven to provide us with quality consultants with the best value to our taxpayers, with a typical savings of 25% below negotiated fees per the American Society of Civil Engineers (ASCE) fee curves. On the next page, please see several examples of recent projects in Waukesha County:

515 W. Moreland Boulevard Administration Center, Room 310 Waukesha, Wisconsin 53188 Phone: (262)548-7020 Fax: (262)548-7913

Consulting Engineering Costs

Project:

CTH Y, I-43 to CTH I

Construction Cost Estimates:

\$7.2Million

ASCE Consultant Guideline:

\$720,000

VENDOR	Technical Score	COST	SAVINGS	SAVINGS %	VS ASCE
Selected – R.A. Smith	66	\$426,304	-	-	\$293,696
Vendor 2 Kapur	66	\$530,293	\$103,989	24.39	\$189,707

Project:

CTH L, CTH Y to CTH O Design

Construction Cost Estimates: ASCE Consultant Guideline:

\$13.5Million \$1,080,000

Technical Score	COST	SAVINGS	SAVINGS %	VS ASCE
65.5	\$822,896	_	-	\$257,104
54.25	\$847,686	\$24,790	3.00	\$232,314
62	\$734,660	(\$88,236)	(10.72)	\$345,340
5	Score 55.5 54.25	Score \$822,896 64.25 \$847,686	Score \$822,896 - 64.25 \$847,686 \$24,790	Score

Project:

Justice Center Facility Expansion (Construction Manager)

Completed Project Full Cost:

\$33.1Million

VENDOR	Technical Score	COST	SAVINGS	SAVINGS
Selected – Adolfson Peterson	59.0	\$1.15 Million	-	-
Vendor 2 KGrunau	63.25	\$1.4 Million	\$260,000	23.00%
Vendor 3 Mortenson	60.31	\$2.4 Million	\$1.2 Million	104.00%

Our process has been proven to save significant tax dollars year after year while still affording us the opportunity with high quality consultants. Other respected organizations, such as the World Bank, consider cost when selecting consulting services for construction projects.

AB 654 will not guarantee quality public works projects throughout the State, but it will definitely drive up the cost of consultant services. If adopted in its present form, Waukesha County will need to cutback on planned highway projects since we cannot depend on the cost saving value process we now employ. For these reasons, we respectfully ask that you do not support AB 654 as currently drafted.

Testimony of

Rosalie F. Morgan

President

EMCS, Inc.

on

2009 ASSEMBLY BILL 654

Before

Assembly Committee on Jobs, the Economy, and Small Business

Madison, Wisconsin

February 3, 2010

Dear Mr. Chairman and Members of the Committee:

It is an honor and a privilege to be here today. Thank you for the opportunity to discuss Assembly Bill 654 and the importance of selecting design professionals under a procedure that is based on quality and competence. My name is Rosalie F. Morgan and I wish to offer my support for Assembly Bill 654. I am a registered professional engineer. In 1983 I founded EMCS, Inc.; an engineering consulting business located in the City of Milwaukee. In 27 years, EMCS has grown to a staff of more than 40 which includes engineers and surveyors providing engineering design, planning and construction inspection for entities such as Wisconsin Department of Transportation, Milwaukee Metropolitan Sewerage District, utilities, local governments, developers and property owners around Wisconsin.

Qualifications-based selection (QBS) is the optimal method for selecting engineering and architectural design professionals. By making superior qualifications and experience the paramount basis for selection, QBS moves beyond focusing on the lowest price, and instead focuses on obtaining the best value—allowing agencies to select the most highly qualified firm to work on their projects.

"Qualifications-based Selection" describes a general competitive contracting process that includes public announcement of projects, full and open competition, and careful review of firms' capabilities, experience, technical skills and personnel.

Qualifications-Based Selection or QBS is the industry standard to ensure that qualified professionals are chosen to design roads, bridges, schools, and all government facilities. The QBS process makes the qualifications of a design team the first consideration in the selection process before any price negotiation begins.

Selection of professional engineers as prime consultants and subcontractors should be based on the qualifications of the engineering firm. Qualifications —including training, experience, capabilities, personnel, and workloads—should be evaluated when selecting an engineering firm.

Qualifications-Based Selection (QBS) is straightforward and includes a three step process. In the first step, consulting firms are invited to submit qualifications to perform work for a specific assignment. Firms are ranked based on the qualifications which are submitted for the specific assignment. In the next step, the top ranked firm develops a scope with the client/owner. In the

third step, an acceptable fee is negotiated for the scope as defined in the previous step. If an acceptable fee cannot be negotiated, the top ranked firm is eliminated from consideration and the second ranked firm proceeds through the final two steps. If this is also unsuccessful, the second ranked firm is eliminated from consideration and the third ranked firm enters the process. At all times, the owner is in control of both the scope and the fee. However, the owner gets the benefit of the consultant's insight and experience in developing the scope.

The federal government has been using innovative contracting methods for professional design services since 1972, when qualifications-based selection became the procurement method for architectural and engineering work. All branches of the Federal government, the Army Corp of Engineers, the U.S. Navy, the U.S. Air Force, HUD, DOD, DOE and NASA, to name a few, use Qualifications-Based Selection (QBS).

Construction of any physical facility is a complicated and highly technical process. Yet, at the outset of most construction projects, owners do not fully comprehend the complexities of the projects they envision and the wide range of design and construction services that will be required in order to transform their vision into reality.

Simply stated, procurement of design services is a very specialized type of contracting because of the difficulty in creating a scope of work upon which to bid. These services involve many intangibles such as technical knowledge, health and safety considerations, aesthetic judgment and creative thought – talent that cannot easily be determined by selecting on price bids.

In discussing this bill, several legislators have asked how the QBS selection process might affect opportunities for small, minority and woman-owned consulting firms. In Southeastern Wisconsin this is especially important. The Wisconsin Department of Transportation which uses a qualification based selection process for procuring engineering services is a good resource in response to these concerns. In fact, the percentage of participation of small, minority and woman-owned engineering firms in the delivery of Department of Transportation design, planning and construction inspection efforts has been consistently higher than that of small, minority and woman-owned construction contractors who are required to bid for their work against much larger firms. Data collected in the last five years indicates that approximately 13% of all firms available for planning, design and construction inspection services are disadvantaged business enterprises yet these firms were awarded approximately 20% of all work for the department. This has not been the case on work awarded based by selecting on price bids for construction contracting.

In conclusion, Mr. Chairman/Ladies & Gentlemen, let me state that I hope these observations will assist the Committee in further understanding the value and nature of A/E selection. Making superior quality and experience paramount in the selection process allows local units of government to chose qualified professionals to design roads, bridges, schools, and all government facilities. I ask that you support passage of AB 654. I appreciate the opportunity to appear before you today and will be happy to answer any questions you may have.

Thank you.



DATE:

February 13, 2010

TO:

The Assembly Committee on Jobs, Economy and Small Business

FROM:

William J. Mielke, P.E., FACE, R.L.S. W////

RE:

AB 654

My name is William J. Mielke and I am here on behalf of the American Council of Engineering Companies of Wisconsin in support of QBS Bill-AB 654. I am a Professional Engineer and Registered Land Surveyor and President and CEO of Ruekert & Mielke, Inc. a 120 person consulting engineering firm located in Waukesha. I am very familiar with the various methods government agencies have utilized to select consultants as the past 39 years of my engineering career has been spent serving City, Village, Town and County government. In addition, I served on and was chairman of the national Committee on Federal Procurement of Architectural and Engineering Services. This committee represented the nation's architects, engineers and land surveyors relative to procurement of professional services by all of the Federal agencies through a process called Qualifications Based Selection (QBS).

AB 654 embodies the nationally recognized process to properly select a consultant in a competitive setting that will work to ensure you get the best value for our public taxpayer expenditures. The most important decision for the success of a public project is the selection of the architectural or engineering firm. This action will determine the quality and cost of a project, the life cycle cost of a project and the satisfaction of the project users. Well-intended, but ill-informed public opinion is that professional services can be obtained by the bidding process, which will result in taxpayer savings. Nothing could be further from the reality of what actually happens when a consultant's selection is based on which firm has the lowest fee.

There are many examples of poor quality designs, cost overruns, litigation and unfulfilled owner expectations which were caused by public owners bidding professional services and the reasons usually fall into one or more of the following recurring themes:

- Public owners usually seek professional consultants to help them with designing and
 overseeing the construction of a project because they do not have the expertise to
 undertake the project themselves. Because of this, most requests for proposals in a
 bidding environment are lacking in the full definition of what is needed or expected
 from the design professionals, therefore, it is impossible to have a level playing field to
 compare bids.
- Without a complete and comprehensive outline of what is being requested from the design professional, the firm who offers the least amount of effort will be the low bidder and be awarded the project.



- In a bidding environment, firms with more experience who would have been able to fully evaluate more cost effective approaches, new technology or other life cycle cost benefit alternatives know they wouldn't have the lowest price and either don't submit a proposal or they submit a proposal using their most inexperienced design staff using standard design practices and conservative standard designs all of which will add costs to the final construction cost of the project.
- Firms selected based on price understand there is no real benefit for any extra effort to save the owner money or to offer cost saving alternatives since their firm will only be considered for future projects if they again are the lowest bidder. Communities lose the ability to build a relationship with a consultant who acts as a trusted advisor and uses his or her talents to do great work such that they will be recommended for future work.
- Low bid design firms cannot provide more detailed and specific plans and specifications as that would take extra time and effort and they wouldn't get the job. Yet construction contractors have continually stated that that plans lacking detail will result in higher bids due to protective contingencies that must be included to cover the unknowns. It's either that or the contractor will submit costly "extra" claims during the construction process for things that weren't well defined.
- Public works projects need to last much longer than a commercial venture where first cost is important and you have what we call "throw away buildings". Consideration needs to be given to the long-term operation, repair and maintenance, which will be a continuing taxpayer cost. Therefore quality is important and the design should not be minimized.

If cost control and the best use of our taxpayers' dollars is what you are trying to achieve, this bill will go a long way toward accomplishing that goal. Professional fees usually represent less than 2% of a project's overall life cycle cost, which includes the design, construction, operation, and maintenance costs. By using QBS and selecting the most qualified and competent consultant, in many cases, even that cost is offset by project savings through the expertise and creativity of the selected consultant.

The introduction of price (even as a small percentage) into the selection process will significantly diminish the opportunity for innovation or evaluation of cost saving opportunities which would have benefitted the taxpayers.

QBS is a competitive selection process and in fact, I would argue that it improves our industry to the overall benefit of the public. Since the QBS selection process includes an evaluation of a consultant's past performance, to be successful you need to work hard to please your client, develop relationships, look for cost saving measures and represent the best interests of the community you are working for. The QBS process makes firms work toward providing higher quality service. It requires that the firms put their best teams on the project and that the firm fully understands the client's needs and has the best plan to meet them. Bidding services



requires none of the above, and in fact takes the decision-making, and the ability to select the most qualified firm out of the hands of the elected officials.

A/E services are not a commodity because each project created by registered and licensed professionals results in a unique, customized product to meet the client's specific needs. It is for that reason they are classified as professional services similar to medical or legal services which are also not subject to "bidding" laws.

The American Public Works Association, which represents the public agencies in the U.S., has continuously supported QBS. They have published many guidelines on the merits and use of QBS with the latest being, "APWA Red Book on Qualifications-Based Selection, Guidelines for Public Agencies", dated August 2006. They state, "Competitive bidding for engineering and architectural services is not in the best public interest, because it may easily lead to employment of a lesser qualified or least qualified firm (rather than the best qualified as should be the objective").

The Federal Government in 1972 passed the Brooks Act, which required the selection of architects and engineers on the basis of their qualifications. Since that time, all but four States have passed similar legislation. It's time for Wisconsin to take action to better protect our taxpayer dollars and pass this proposed legislation. I don't see this as a mandate, but rather an opportunity for the Legislature to take a positive action to get the maximum value for our tax dollars.

We appreciate the opportunity to comment on this very important piece of legislation and would be happy to answer any questions you may have or provide any additional information you may require.



of Wisconsin

The American Council of Engineering Companies of Wisconsin 3 S Pinckney Street, Suite 800 Madison, WI 53703 Tel: 608-257-9223 Fax: 608-257-0009 www.acecwi.org

the business voice of the Wisconsin consulting engineering industry

ACEC WI Testimony

Assembly Committee on Jobs, Economy & Small Business

Public Hearing on AB 654

Carol Godiksen, Executive Director February 3, 2010



Thank you Representative Molepske and members of the Jobs, Economy & Small Business Committee for the opportunity to speak in support of AB 654. I am Carol Godiksen, Executive Director of the American Council of Engineering Companies of Wisconsin (ACEC WI).

We believe this bill offers the best value for procurement of professional services by local units of government. Receiving bipartisan support, this is a best practices bill, ensuring that the most qualified firm is selected and precious state funds are not wasted. This bill is also the most significant piece of legislation ever introduced for our industry.

ACEC WI represents consulting engineering firms in Wisconsin. We represent 71 firms with more than 150 offices across the state. Our members provide more than 3500 good paying jobs. ACEC WI members play a critical role for Wisconsin, from designing infrastructure that assures the safety of its citizens and fuels economic development to developing ways to clean up and protect the environment.

Our members work with local communities, the state, and other governmental units to identify critical needs and solve problems. The design solutions are creative, cost effective, and provide clear direction for the bidding and construction of the final project.

Owners may have an idea of what is needed for a project, but it is almost never clearly defined. That's why they engage the services of a design professional – to help develop the project's scope and explore the best alternatives for a successful project. By selecting the most qualified firm, the owner is ensured of receiving the best value and the highest level of satisfaction over the life of the project.

AB 654 spells out the process for selecting the most qualified firm through a Qualifications-Based Selection (QBS) process. Using this procurement process, an owner initially selects a design professional based on the owner's full satisfaction with the design professional's qualifications. The price is secondary. But let me stress, using QBS does not mean there's a blank check given to the design professional. Price will *always* be a factor and, for state projects, providing value to the taxpayers of Wisconsin is paramount.

The difference in this procurement method is that price comes into play after the highest technically ranked firm is selected and the scope of work is fully defined. The owner is not obligated to contract with the top ranked firm if the 2 parties cannot agree on the tasks and price. The owner is never obligated to pay more than it can afford or has budgeted. The owner can simply move to the next highest ranked firm.

QBS ensures safe, quality design work while saving taxpayers money, which is why state and local governments mandate it across the country. In fact, Wisconsin is 1 of only 4 states that do not have QBS legislation on the books.

This is best value procurement legislation that is time-tested, fair, and equitable. In 1972 Congress required QBS in order to save money and ensure quality design on all projects using federal funding. According to a U S Senate report that accompanied the federal legislation, the law's purpose was to codify practices of the previous 30 years of federal, state, and local governments to "retain the present practice of selecting the best qualified design professional, subject to the negotiations of compensation that is fair and reasonable to government." This bill's intent is to capture similar savings by having local governments use QBS. Here in Wisconsin, both the Department of Administration (through administrative rule) and the Department of Transportation (because of federal funding) use QBS in the selection of engineers and architects.

Cheap design is expensive. Design costs typically represent 5 - 8% of construction costs. When you factor design into the total life-cycle cost of projects, design costs represent 1% of the project. Yet the design professional incurs a significant responsibility in shaping the owner's concept into a workable project and a biddable set of drawings and specifications. It makes sense to hire the best-qualified design professional in order to reduce construction costs and longer term operations and maintenance costs.

A recently released study on QBS was jointly conducted by the University of Colorado and Georgia Institute of Technology. Researchers drew from a database of approximately 200 public and private construction projects in 23 states. The sample included transportation, water, commercial, and industrial projects ranging in size from relatively small projects to those costing hundreds of millions of dollars. The study compared various procurement methods including qualifications-based selection, best value, low bid, and sole source. Factors considered included total project cost, projected life-cycle cost, construction schedule, and project quality outcome. The results show that using QBS to procure the design component of a construction project consistently meant lower overall construction costs, reduced change orders, better project results, and more highly satisfied owners than in other procurement methods.

For almost 25 years, ACEC WI has pooled resources with the American Institute of Architects, Wisconsin chapter, to provide public owners with tools and facilitation services to guide these units of government through the QBS process for selecting an engineer, architect, or land surveyor. There has never been a charge for this assistance. And, in the last year alone, the QBS Wisconsin website received more than 7,600 new visitors. Included with my written testimony is one of the tools we have made available; it provides answers to frequently asked questions regarding QBS.

Using QBS to procure design services provides value and saves the Wisconsin taxpayer money. ACEC WI asks you to support AB 654. Thank you.



122 W. Washington Avenue Suite 300 Madison, Wisconsin 53703-2715

608/267-2380 800/991-5502 Fax: 608/267-0645

E-mail: league@lwm-info.org www.lwm-info.org

To: Assembly Committee on Jobs, the Economy, and Small Business

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: February 3, 2010

Re: AB 654, Requiring Municipalities to Use Qualifications-Based Selection Process in

Certain Contracts

The League of Wisconsin Municipalities opposes AB 654. The bill requires municipalities to use a qualifications-based selection (QBS) process when selecting engineering or architectural consultants for public construction projects that exceed \$250,000 in cost and are funded in part by the state.

AB 654 creates a consultant selection process that actually prohibits municipalities from inquiring about proposed fees or costs until after a top candidate has been selected.

While municipalities support and often use QBS, we oppose mandating the process even under the limited circumstances specified in the bill. We have the following specific concerns:

- ♦ The bill explicitly prohibits asking about price in phase one of the selection process. Many communities currently use a QBS plus cost process for selecting engineering and other professional consultants. We are opposed to eliminating price considerations entirely from the first stage of the selection process.
- ♦ Some of our members are concerned that the bill places municipalities in a relatively weak position to negotiate a contract once a firm is selected. Unlike DOT, municipalities are not regularly involved in projects that necessitate the selection of consulting engineers. The selected engineering firm need not be worried about developing a long term relationship and winning future contracts as it negotiates with the municipality.
- The process seems to favor and benefit established and larger firms and would for the most part foreclose the ability of start-ups or fledgling consulting firms with limited performance histories to compete for municipal work.
- Small and medium sized communities with less staff and resources will find it difficult and expensive to comply with the QBS process spelled out in the bill.

The bottom line is that municipalities should have flexibility to choose professional consultants in the manner that best meets their needs. There is no need to change current law.

For the above reasons we urge you to not recommend passage of SB 295/AB 553. Thanks for considering our comments.



22 EAST MIFFLIN STREET, SUITE 900 MADISON, WI 53703 TOLL FREE: 1.866.404.2700 PHONE: 608.663.7188 FAX: 608.663.7189

www.wicounties.org

MEMORANDUM

TO:

Honorable Members of the Assembly Committee on Jobs, the Economy, and

Small Business

FROM:

David Callender, Legislative Associate

DATE:

February 3, 2010

SUBJECT:

Opposition to Assembly Bill 654

The Wisconsin Counties Association opposes Assembly Bill 654 (AB 654) which relates to qualifications-based selection for consultants.

Assembly Bill 654 changes the selection process for certain categories of professional services and creates a new set of requirements for local governments, including counties. Specifically, the bill prohibits local governments from initially considering a consultant's fees, costs, or level of efforts and instead requires them to consider only the consultant's qualifications in ranking their proposals.

The bill then requires local governments to negotiate with the highest-ranked consultant to finalize the terms of the contract, allowing costs, fees, and level of efforts to be considered at this point. If the two parties are unable to reach agreement on these terms, the process must be repeated with the next highest-ranked consultant.

This procedure is burdensome for local governments on several levels. First, it applies only to a narrow category of consultants, namely those who provide architectural, engineering, land surveying, landscape architecture, photogrammetric, or professional geology services on projects with a total cost of more than \$250,000 in which the state provides an unspecified amount of funding, or in any bridge inspection project of any cost.

Second, the bill requires local governments to negotiate with the consultants on a contract, but does not require the local governments to hire the most qualified consultant, only to negotiate with that consultant. The bill requires local governments to repeat this process as needed, only to allow the local governments to "use any other process authorized by law" if an agreement cannot be reached. The bill also allows local governments to solicit proposals directly from a consultant

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if the consultant has provided similar services in the past, without going through the procedure required elsewhere in the bill.

Ultimately, the bill appears to have little impact on the outcome of the consultant selection process but adds additional steps that are unnecessary. Due to the budget constraints that counties and other local governments are facing, WCA respectfully requests the Committee to reject this bill.

Please feel free to contact WCA for further information.



W62 N215 Washington Avenue Cedarburg, WI 53012 Phone: (262)376-4246 Fax: (262)375-2274

...where engineering solutions meet water quality...

Testimony AB 654– QBS Bill February 3, 2010 Assembly Committee on Jobs, Economy & Small Business

Thank you, Representative Molepske, and members of the Jobs, Economy & Small Business Committee, for the opportunity to speak in support of AB 654. My name is Minal Hahm, President and Owner of M Squared Engineering, LLC and new member of the American Council of Engineering Companies of Wisconsin and Illinois (ACEC).

From a small, woman-owned business owner's perspective, I believe this bill will impact both small and large businesses and communities in different ways. Currently, procurement of services by State or local agencies is generally by qualifications. For example, WisDOT (Wisconsin Department of Transportation) selects the qualified firm based on the project team's qualifications as well as availability. The contract is negotiated with the selected team. Should the WisDOT and the selected team not be able to negotiate a mutually acceptable price, the next highest qualified team is approached for negotiations.

Local municipalities, however, typically request a price as well as qualifications in the same response to a request for proposals. Typically, the lowest priced submittal is reviewed to ensure the team is able to perform the contract. The level of scrutiny is dependent upon the representative(s) from the municipality. In the past, there have been specific instances where this method has ultimately cost the municipality (or ultimately the taxpayer) more monies due to mismanaged projects or repeated addendums to the original contract due to a lack of scope understanding.

A concern from a local Village Engineer regarding this bill was the lack of knowledge on his/her part with respect to fair prices. His example was from 5 years ago, when he solicited a proposal to design a road through his Village. He got a range from \$30,000 to \$200,000 with a few at around \$120,000. The highest priced proposal had a lot of senior level engineers and landscape architects while the lowest price was all junior level engineers or technicians. The \$120,000 range teams were generally a good cross section of senior and junior level team members. If he had gone with the most qualified, he would have taken the \$200,000 and then attempted to negotiate them down. He probably would have been able to get them to \$160,000 and thought he was saving the Village \$40,000. However, having the prices on hand with the team qualifications, he was able to select one of the \$120,000 teams. This essentially saved the

Village \$80,000. It is not known how many contract amendments there were on the project. The Village Engineer did note that if the QBS bill passes, he may be at a disadvantage with respect to his knowledge on what reasonable and customary prices are for engineering services. If he had been forced to select the \$200,000 company based on qualifications, he would have essentially been overpaying for the same services he got from the \$120,000 project teams.

On the other hand, another example was where the contract scope was defined very briefly and without specific detail to the various tasks or project limits. The prices that came in along with the qualifications were a wide range. Having a tight budget, the Town Engineer selected the lowest priced project team. The team selected was technically capable of performing the work, but did not have the expertise on the specific project with respect to their experience. Had they had similar experience, they would have foreseen many obstacles with respect to the needs of the project and the Town. This would have been accounted for them in their original quoted and contracted price. As a result, additional scope and price amendments to the original contract were required to complete the project. The final price totalled higher than any of the originally received bids. This was partly due to the selected team's inexperience with similar projects. Additionally, the amendments seemed to be more extensive due to their caution on unfamiliar tasks. Had a more qualified team been selected, those "out-of-scope" amendment items would have been included in the original contract price and the project would have been seamless.

Engineering services are a professional service and should be treated as such. When compared to the medical or legal professions, rarely does the client or patient have the privilege of selecting the least expensive service provider. The selection is purely based on the type of medical or legal service needed.

In conclusion, although I struggle with the impacts of this bill on smaller towns and smaller consulting firms, I believe that with the appropriate measures in place, this bill would be beneficial in most cases for the municipalities seeking professional services. Such measures may include general guidelines for selecting a professional engineer or landscape architect. These guidelines may include such things as a reasonable price for similar services based on the geographic regions. This information could be readily available to those seeking such services. For projects costing more than \$250,000, ultimately, more value will be brought to the ultimate end-user – the taxpayer who is neither knowledgeable nor qualified to make decisions on the best qualified engineering team to perform specific project tasks.

Testimony AB 654– QBS Bill February 3, 2010 Page 3 of 3

Although I am not able to attend the hearing in person, I would be glad to offer responses to any questions that may arise. I can be reached by e-mail at minal@msquaredengineering.com or by telephone at (414) 248-4408. Thank you for your time.

Sincerely,

M SQUARED ENGINEERING, LLC

Minal Hahm, PE, CFM

Principal

Letter in Opposition to AB654/SB442 & Request for Amendment QBS Legislation

February 3, 2010

I write to request an amendment to AB654/SB442, which would mandate the use qualifications based selection of a consultant by any city, village, town, or county for public works design contracts based only on a consultant's qualifications.

I commend the legislature for their continued efforts ensure that design contract procurement methods continue to safeguard the public interest and ensure that long term public works cost savings are realized by selecting highly qualified designers for the state's public works projects. In today's economic environment shrinking government budgets and reduced government staffing levels make selecting high quality design professionals based on value a critical issue.

I urge you to amend AB654/SB442 to permit local units of government to continue their current practices of Value Based Selection of design professionals by limiting cost criteria to not more than 25% of the weighted selection criteria. Specifically, I urge you to support a Value Based Selection amendment to allow local units of government to select design consultants as follows:

- Qualifications and Project Approach (75% QBS)
- Level of Effort & Cost (25% Price)

My experience has been that in most cases, several firms are usually equally qualified to complete the public works design contract for any given project. By allowing cost to be a limited consideration of the evaluation criteria, local units of government are allowed to continue selecting the most cost effective design service proposal from amongst a pool of equally qualified design firms.

It has also been my experience as an owner of an engineering consulting firm that value based selection methods can result in design contract savings of 20-30% of the contract amount as the result of firms competing with each other on both qualifications and cost based criteria. This savings is significant and can mean the difference between having to make difficult budget cut decisions and raising fees and taxes for local units of government.

Thank you for considering my views, and please let me know if I can provide further information to assist you in further consideration of this matter.

Sincerely,

Craig Donze, PE Principal One Source Consulting 11805 W. Hampton Ave. Milwaukee, WI 53225 (414) 462-9005

Member of American Society of Civil Engineers and a WisDOT Eligible Consultant

February 3, 2010, 1:00 PM

Hearing Before Assembly Committee on Jobs, Economy & Small Business

AB 654, Qualification-Based Selection

Testimony of:

Frederick J. Halfen C.P. Vice President, Ayres Associates 1802 Pankratz St. Madison, WI 53704

608.443.1251 HalfenF@AyresAssociates.com

County Board Supervisor, District 26, Sauk County 608.544.2048 fhalfen@co.sauk.wi.us

I am speaking today in support of AB 654, Qualification-Based Selection (QBS) of design professionals. My name is Fred Halfen, and I am a vice president at Ayres Associates, a Wisconsin-based engineering firm. I am also a county board supervisor in Sauk County, Wisconsin. I have a unique perspective of this issue as I have dealt with local government procurement as both a consultant and as member of county government.

As a consultant I have been involved in thousands selection processes over my career of 35 years. Fortunately my firm has been successful in winning many of this projects as we are a viable business that just celebrated 50 years of service to our clients. Over my career I have participated in many very successful projects and some that did not go well. There are many reasons why projects succeed or struggle. One of the major reasons is the selection process.

Procurement of professional engineering services at a local government typically follow a path that includes:

- Identification of a project (which is often tied to a problem)
- Elected officials budget for and approve the project
- Department staff prepares and publishes the request for proposals which includes a scope of services
- Consultants respond
- Selection is made by staff and approved by elected officials

Often the professional services sought are technically complex and require a high degree of training and experience to solve "the problem". Very few local governments have the staff or elected officials with sufficient background to assemble a complete scope of services and to evaluate a technical proposal. The results are scope of services that are vague, incomplete, and insufficient to properly respond. The consultant in responding to an insufficient scope of services has to make assumptions which may or may not be correct. The local government has to evaluate the responses and try to understand the technical assumptions. This is an impossible situation and often the only grounds for evaluation becomes price. Price works if the assumptions are all correct but this seldom happens. More often the assumptions are not correct and a string of change orders follow. There is no one to blame here, everyone in this process has tried to do the best job they can for their employer and the tax payers. The procurement process is flawed and make success difficult to achieve.

The QBS bill you are considering today outlines a fair, competitive, open, and defensible process that will solve the challenges local government experiences in procuring professional engineering services. Most important, this process will assure that the tax payers are receiving value for their dollars.

Now, I would like to trade hats and speak from the perspective of a county supervisor. We need help. The scenario I just talked about happens often. You might think that there is nothing stopping local government from using QBS and that is true, however, local governments are unfamiliar with QBS and on the surface it looks overly complex. By passing this legislation, local governments will be obligated to learn and use the process on major projects. In doing so, they will soon learn it's benefit and I predict that over time local governments will adopt this process for all levels of professional services.

I respectful ask that you support this legislation to help our industry and our clients (local governments) solve this problem.